

Internal Revenue Service

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Person To Contact:
, ID No.

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Date:
February 12, 2015

LEGEND

X =

Sub =

State =

D1 =

D2 =

D3 =

Dear :

This letter responds to a letter dated November 19, 2014, and subsequent correspondence, submitted on behalf of X by its authorized representative requesting a ruling under § 1362(f) of the Internal Revenue Code (Code).

FACTS

The information submitted states that Sub was incorporated on D1 under the laws of State and elected to be an S corporation effective D1. Sub became a wholly owned subsidiary of X on D2, and X elected to treat Sub as a QSub effective as of D3. However, due to inadvertence, X's election to treat Sub as a QSub was ineffective. X

represents that it and Sub have filed tax returns for all the relevant tax years consistent with the tax treatment of Sub as a QSub from D3.

LAW AND ANALYSIS

Section 1362(a) provides that, except as provided in § 1362(g), a small business corporation may elect, in accordance with the provisions of § 1362, to be an S corporation.

Section 1361(a)(1) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) provides that the term “small business corporation” means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

Section 1361(b)(3)(A) provides that, except as provided in regulations prescribed by the Secretary, for purposes of the Code — (i) a corporation which is a QSub shall not be treated as a separate corporation, and (ii) all assets, liabilities, and items of income, deduction, and credit of a QSub shall be treated as assets, liabilities, and such items (as the case may be) of the S corporation.

Section 1361(b)(3)(B) provides that the term “QSub” means any domestic corporation which is not an ineligible corporation (as defined in § 1361(b)(2)), if (i) 100 percent of the stock of such corporation is held by the S corporation, and (ii) the S corporation elects to treat such corporation as a QSub.

Section 1362(d)(2)(A) provides that an election under § 1362(a) will be terminated whenever (at any time on or after the first day of the first taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides that if (1) an election under §§ 1362(a) or 1361(b)(3)(B)(ii) by any corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a

small business corporation or a QSub, as the case may be, or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation or a QSub, as the case may be) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation or a QSub, as the case may be, during the period specified by the Secretary.

CONCLUSION

Based solely upon the information submitted and the representations made, we conclude that X's election to treat Sub as a QSub was ineffective for the taxable year beginning D3. We also conclude that the circumstances resulting in such ineffectiveness were inadvertent within the meaning of § 1362(f). Accordingly, under § 1362(f), Sub will be treated as a QSub from D3 and thereafter, provided that Sub's QSub election was otherwise valid and has not otherwise terminated under § 1361(b)(3)(C).

Except for the specific rulings above, we express or imply no opinion concerning the federal income tax consequences of the facts of this case under any other provision of the Internal Revenue Code. Specifically, we express no opinion regarding whether X otherwise qualifies as a small business corporation under § 1361, or whether Sub otherwise meets the definition of a QSub under § 1361(b)(3)(B).

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures (2):

Copy of this letter
Copy for § 6110 purposes

cc: